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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,206	07/09/2004	David Norbert Grabowski	209546-81360	3243
44200	7590	11/08/2005		
HONIGMAN MILLER SCHWARTZ AND COHN LLP 32270 TELEGRAPH RD SUITE 225 BINGHAM FARMS, MI 48025-2457			EXAMINER SAETHER, FLEMMING	
			ART UNIT 3677	PAPER NUMBER

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/501,206	GRABOWSKI, DAVID NORBERT	
	Examiner	Art Unit	
	Flemming Saether	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Specification

The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-7, 9, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kempshall (US 586,770). Kempshall discloses a "heatstake" (b, f) comprising a base portion (the upper end as in Fig. 1, 2, and 4) including first (f) and second (b) concentrically disposed shaft portions each having a central passage. The first shaft being longer (see fig. 3) than the second shaft and having an external diameter smaller than the inner diameter of the second shaft such that the first shaft is deformed "downwardly" and outwardly by pressure applied thereto to provide pressure to the second shaft (see Fig. 4). The second shaft includes a plurality of slots to define a plurality of fastening segments (b², line 38) which deform to engage the workpiece and form a "flower" shape (see Fig. 3). The fastening portion engaging the work piece is an intended use since the claims are directed to the "heatstake" alone but, that notwithstanding, in Kempshall where the fastening portions are initially bent they would

engage the workpiece at the ends of the workpiece's aperture. There is a gap formed between the ends of each of the first and second shafts.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 8 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kempshall. Kempshall discloses three slots but, in not specific as to spacing of 120° between any two of the slots. At the time it would have been obvious for one of ordinary skill in the art to space any two of the slots of Kempshall because there is no criticality to the spacing of the slots. In regards to claims 14-16, plastic is a well know substitute for metal and as such the person of ordinary skill in the art would have recognized to substitute plastic for the metal second shaft in Kempshall since plastic is generally more economical.

Allowable Subject Matter

Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Remarks

As addressed in the above rejection, the examiner is of the opinion that Kempshall continues to anticipate the claims even as amended. Applicants argues that the ends of the metal part of the eyelet cannot engage the garment thus cannot anticipate the claim limitation of the fastening portions engaging the workpiece. In support applicant points of lines 63-66. In response, the examiner initially points out that "garments of the wearer" referenced in lines 63-66 is not in reference to the fabric labeled *a*, which equates to the "workpiece" of the claims, but instead refers to some other garment which may come in contact with the ends of the garment. Therefore, Kempshall does not disclose that the fastening ends do not engage the workpiece. Furthermore, as discussed above, the fastening portion engaging the workpiece is recitation of intended use since the claims are directed solely to the "heatstake" and the structure of Kempshall would be capable that intended use. Also, in Kempshall where the metal eyelet are form the bend they engage the fabric at the ends of the ends of the aperture would meet the limitation in the claims of the fastening portion engaging the workpiece.

Applicant's further remarks add nothing new or nothing which had not already been addressed in the above rejections thus no further response is believed necessary.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Flemming Saether
Primary Examiner
Art Unit 3677